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delay on the part of the complainant, the change and the delay together will constitute a sufficient ground for denying a specific performance, when sought by one thus in default.

3. VENDOR AND VENDEE—*Knowledge of title—Estoppel.* A vendor who has contracted to deliver a good and sufficient deed to land, and who knows that he has not the legal title thereto and cannot make such deed, cannot complain of the failure of the vendee to notify him of objections thereto. He cannot deny knowledge of the condition of his own title.

4. RESCISSION—*Decree against vendor—Charge on land.* Upon rescission of an unrecorded contract for the sale of land where numerous judgments have been recovered against the vendor between the date of the contract and the time of rescission, the decree in favor of the purchaser for the amount paid on the land will not be made a charge upon the land.

NATIONAL MUTUAL BUILDING & LOAN ASSO'N v. BLAIR.—Decided at Wytheville, July 5, 1900. *Harrison, J.* Absent, *Riely, J.*:

1. FRAUD—*Delay—Acquiescence—Waiver.* Great punctuality and promptness of action is required of one who seeks to avoid a deed on the ground that it was obtained by fraud. Upon discovery of the fraud or of facts or circumstances from which knowledge thereof would be imputed to him, he must act without delay. Unnecessary delay, though short of the act of limitations, will generally bar equitable relief. If by reason of such delay the rights of innocent third parties have intervened or the position of even the wrong doer is changed to his prejudice, the right to repudiate will be deemed to have been waived.

2. SPECIFIC PERFORMANCE—*Change of circumstances—Delay.* Where there has been a change of circumstances or relations of parties which would render either an execution or rescission of a contract a hardship to the defendant, and this change grows out of an unexcused delay on the part of the complainant, the change and delay together will constitute a sufficient ground for denying equitable relief.

3. VENDOR AND VENDEE—*Assumption of lien—Release.* If the purchaser of real estate assumes the bonds of his vendor as a part of the purchase price, and secures the same by a deed of trust on such real estate for the protection of his vendor—the said bonds being already secured by a prior deed of trust on the same real estate—the release of the first deed of trust operates as a release of the second deed of trust also.

4. RECORDATION—*Purchasers—Notice.* As only purchasers without notice can take advantage of a failure to record, such failure cannot affect a purchaser who has actual notice.

EUBANK v. BROUGHTON.—Decided at Wytheville, July 5, 1900.—
Keith, P. Absent, *Riely, J.*:

1. MANDAMUS—*Public officers—Discretion.* The writ of mandamus is the appropriate remedy for compelling the performance by a public officer of a duty which is either imposed upon him by law, or necessarily results from the office

which he holds. It does not lie in any matter requiring official judgment, or resting in sound discretion. It may require an inferior officer to act, but the character of the action cannot be affected.

2. SCHOOL TRUSTEES—*Duties—White and colored children—Decision as to color—Appeal—Mandamus.* It is the duty of school boards to assign white children to white schools and colored children to colored schools, but whether a child is white or colored is a fact to be determined by the board, and involves the exercise of a judicial discretion on the part of the board which the court cannot control. If the party aggrieved is dissatisfied with the action of the board an appeal is allowed him to the county superintendent of schools, and, this being an adequate remedy, mandamus will not lie.